IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 654 OF 1988.

State of Maharashtra .... Appellant.

Versus.

Manohar Dayanoba Gandhi
(since deceased through his LRs.)
1A) Smt.Malati Manohar Gandhi,
wife, Age: 47.
1B) Sanjay Manohar Gandhi.
Son, age: 32.
1C) Santosh Manohar Gandhi,
Son, Age: 25.
1D) Memant Manohar Gandhi,
Son, Age: 24,
1E) Kum.Sangita Manohar Gandhi,
Daughter, Age: 21,
1F) Smt.Saguna Dnyanoba Gandhi,
Mother, Age: 90.
All R/at & Post: Malkapur,
Taluka: Shahuwadi.
1G) Sou.Rekha Rajendra Mahakal,
Daughter, Age: 30.
R/at & Post: Khed, Wanipeth,
Taluka Khed, Dist.Ratnagiri.
1H) Sou.Megha Tushar Berde,
daughter, Age: 27,
R/at Harkari, Post: Chanderai,
Ta.& Dist. Ratnagiri.
1I) Sou.Sheela Shashikant Warange,
Daughter, Age: 20,
R/at & Po: Malgund, Tal.& Dist.
Ratnagiri. ... Respondents.

Shri K.K.Tated, A.G.P. for the Appellant.

None for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 7th April, 2006.

ORAL JUDGMENT.

1. Heard Shri Tated, learned A.G.P. appearing for the Appellant. None appears for the Respondents.

2. The Appellant-State of Maharashtra has taken exception to the Judgment and Award dated 29th September 1986 passed by the learned Addl.District Judge, Kolhapur in a Reference proceedings under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1984"). The land admeasuring 1700 sq.meters bearing Revision Survey No.65 situated in the town of Malkapur, Taluka Shahuwadi, District Kolhapur, was notified for acquisition for the purpose of construction of Sub-Market Yard. Notification under section 4 of the said Act of 1894 was issued on 7th November 1979. Apart from the market value of the acquired land, compensation was claimed in respect of 36 Rival Trees, 10 Graft Mango Trees, 1 Sheesam Tree, and 39 Teak Wood Trees. The Special Land Acquisition Officer by Award dated 9th March 1981 offered market value of the land at the rate of Rs.250/- per Are. He fixed the market value of the trees at the different rates and awarded solatium at the rate of 15%. He awarded total compensation of Rs.10,807.58 ps. The Reference Court came to the conclusion that the Graft Mango Trees need to be awarded

market value at the rate of Rs.500/- per tree. The Reference Court held that market value of the land should be fixed at the rate of Rs.400/- per sq.yard. The learned A.G.P. submitted that so far as the market value of the land is concerned, it is based only on one sale instance dated 11th April 1972 where the market value was Rs.400/- per Are. He submitted that the area of land covered by the said sale instance was only 211.41 sq.meters and therefore, even assuming that the said sale instance was comparable, necessary deduction on account of development charges ought to have been made in respect of the acquired land as the area of acquired land was 1700 sq.meters. He submitted that the rate of Rs.400/- per Are is on the higher side and the same ought not to have been awarded.

3. I have considered the submissions. The acquired land is situated within the town of Malkapur. The sale instance which is relied upon is of the sale deed dated 11th April 1972. The certified copy of the sale deed was produced and proved by examining one Adam Mohammed at Exh.24 who is the purchaser of the land covered by the said sale deed. He has deposed that the land subject matter of the sale deed was open space forming part of a court yard. He stated that he has purchased the land at the proper market rate.

4. It must be borne in mind that in the present case the date of section 4 notification is 7th November 1979 and the sale instance which is relied upon of a similarly situated land is of 11th April 1972. As stated earlier, the land is situated within a very well developed town of Malkapur. In the case of Land Acquisition Officer v/s. L.Kamalamma (since deceased by LRs.) reported in (1998) 2 S.C.C. page 385, the Apex Court held that the Court is justified in taking judicial notice of the fact that the general trend in the price of land is on the rise. As in the present case we are dealing with a land situated within the town of Malkapur, it is reasonable to take a judicial notice that there must be a reasonable rise in the price of lands between 1972 and 1979. The Reference Court fixed the market value at the rate of Rs.400/- per Are which was the market value prevailing in the year 1972. The sale instance was in respect of a small piece of land as compared to the acquired land. However, considering the aforesaid circumstances, no fault can be found with the view taken by the Reference court by fixing the market value at the rate of Rs.400/- per Are. The net result is that the additional compensation of only Rs.10,184.07 has been awarded to the Respondents.

5. No case is made out for interference. The First Appeal is dismissed.

Judge.